

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,624

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Division of Child Care Services of the Department of Social and Rehabilitation Services terminating his child care subsidy due to excess income.

FINDINGS OF FACT

1. The petitioner is the single father of two children ages 8 and 3 who attend day care while he is employed in the trucking industry. His work day begins at 8:00 a.m. and ends anywhere from 4:00 to 7:30 p.m. in the evening.
2. The petitioner's day care costs run from \$500 to \$650 per month. In the summer months they are closer to \$800 per month. \$24.65 per day of those costs are currently being paid by the Division of Child Care Services.
3. The children were originally found eligible for day care services when they were placed in the protective custody of SRS prior to their mother's departure from their home. As of March, 1995, custody of the children was returned to their father and he was notified on March 9, 1995, that they would no longer be automatically eligible for day care payments as protected children. He was told that he could reapply under another category and was sent a new application.
4. The petitioner reapplied and asked that the children receive a day care subsidy in order to allow him to work. He was asked to report his income and, in response, he supplied his two latest paystubs showing that he grossed \$510.03 in one week and \$558.75 in the next. He also reported that he makes \$400 per month from a rental apartment. Based on this information, the Department concluded that he averages about \$2,697.88 per month (\$32,364 per year) in gross income.
5. Based on the above information, the Department concluded that the petitioner had income in excess of

the monthly gross maximum for a family of three, \$1,837, and notified him on March 30, 1995 that he would no longer be eligible for day care benefits effective May 31, 1995.

6. The petitioner appealed that decision because he cannot afford \$650 per month in child care payments and because he feels the income figures used by the Department are excessive. He asks that only \$166 per month of the rental income be included and that a lower figure be used for his monthly income which fluctuates. In support of his position he offered a copy of his tax return for the 1994 tax year.

7. The petitioner's tax from showed that he had gross earned income of \$29,947 last year and a net rental income of \$166. The latter figure was arrived at by deducting \$3,357 in expenses (mortgage, insurance, taxes, utilities, etc.) from \$4,200 received in rent last year and then deducting a further \$677 in depreciation expense.

8. The petitioner believes he is doing as well now as he was last year although he makes the same hourly wage. He cannot afford to pay large day car expenses because he has a lot of other expenses and must meet them alone, including a \$500 per month mortgage and debts from the seven years of his marriage.

ORDER

The decision of the Child Care Services Division is affirmed.

REASONS

In order to obtain a child care subsidy through CCSD, the applicant must first demonstrate that he is the primary caretaker of the children and has a service need and meets income eligibility standards. Regulation 4032, Child Care Services Regulations, Revised November 1, 1990, Vt. Dept. of Social and Rehabilitation Services. The regulations provide that a "service need exists when child care is necessary to support a goal of 'self-support' or 'protection' or 'family support.'" Regulation 4033, *Id.* The petitioner's children were first found eligible for such services because they required protective services child care. They are currently eligible under the 'self-support' service need category because their father needs the day care to maintain his employment. The petitioner does not dispute the service need categorization which has been assigned to him.

The regulations provide that families who meet the service need must have "monthly gross income at or below the levels given in the Child Care Subsidy Schedule." Regulation 4034(1) *Id.* Exceptions from meeting this income standard are made for families whose " 'service' need is established as the result of the need for Protective Services Child Care" and who are subsidized at the full 100% rate. Regulation 4034.1(2). Prior to March of 1995, the petitioner was excepted from meeting income standards under that regulation.

There is no exception from complying with income standards for families whose service need is based upon their need to maintain employment. Therefore, the petitioner's income must be considered before he can maintain his eligibility. In its definition of countable gross income the regulations include the following:

The total monthly income received by a child and her/his primary caretakers which is derived from any source except the following:

...

16. Business expenses of self-employment, (other than depreciation charges) in accordance with current IRS procedures.

Regulation 4031, Id.

These regulations when applied to the petitioner's case require complete inclusion of all income he earns as wages. The initial information supplied by the petitioner indicated that he had average earned income of \$2,297.88 per month. His subsequently supplied tax form 1994 indicated that he averaged \$2,433.58. Since the latter figure was higher, it cannot be said that CCSD made an error in calculating his earned income.

The petitioner's self-employment rental income was not correctly calculated based on information which the petitioner supplied at the hearing. Assuming that his rental income is \$4,800 this year, it appears from his tax form that his expenses of operation are about \$3,357, for a total countable income of \$1,443 per annum or \$120.25 per month. The \$677 depreciation figure deducted on his tax forms cannot be deducted under CCDS regulations.

When the lower earned income figure most favorable to the petitioner of \$2,297.88 per month is added to the adjusted rent figure of \$120.25 per month, a new monthly income figure of \$2,418.13 is reached. The Child Care Subsidy Schedule allows a 100% subsidy for three member families with \$880 per month or less and a sliding-scale partial subsidy for three member families who have between \$880 and \$1,837 in income per month. Regulation 4035, Id. Families with income above the \$1,837 per month figure are not eligible for any subsidy and household expenses cannot be considered to reduce the family's income below that level. Even with recalculations reflecting expenses and averages most favorable to the petitioner, he still has \$581 more in monthly earnings than is allowable for eligibility under this program. The decision of CCSD to deny his benefits must be upheld.

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